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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 JOHN DOE #1, an individual; JOHN
10 DOE #2, an individual; and PROTECT
11 MARRIAGE WASHINGTON,

12 Plaintiffs,

13 v.

14 SAM REED, in his official capacity as
15 Secretary of State of Washington; and
16 DEBRA GALARZA, in her official
17 capacity as Public Records Officer for the
18 Secretary of State of Washington,

19 Defendants.

CASE NO. CV- 09-5456BHS

ORDER DENYING ARTHUR
WEST'S MOTION TO
INTERVENE ON SHORTENED
NOTICE AND ORDER TO
SHOW CAUSE TO STAY
ACTION PENDING APPEAL

20 This matter comes before the Court on Arthur West's motion to intervene (Dkt.
21 58) and the Court's review of the file. The Court has considered the pleadings filed in
22 support of and in opposition to Mr. West's motion, and it is hereby denied. On review of
23 the file, the Court orders the parties to show cause why the Court should not stay any
24 further proceedings in this matter during the pendency of the appeal filed with the Ninth
25 Circuit Court of Appeals. *See* Dkt. 65.

26 **I. FACTUAL AND PROCEDURAL BACKGROUND**

27 On July 28, 2009, Plaintiffs filed a complaint and motion for temporary restraining
28 order and preliminary injunction, seeking to enjoin the Secretary of State of Washington
from publicly releasing documents showing the names and contact information of those
individuals who signed petitions in support of Referendum Measure No. 71 ("R-71").

1 Dkts. 2 (Plaintiffs' complaint) and 3 (motion for temporary restraining order and
2 preliminary injunction).

3 On September 1, 2009, Arthur West, a *pro se* litigant, hand delivered a motion to
4 intervene in this action on shortened notice. Dkt. 58. On September 2, 2009, Mr. West
5 filed a declaration in support of his motion to intervene. Dkt. 60. On September 3, 2009,
6 Mr. West filed a supplemental memorandum in support of his motion to intervene. Dkt.
7 61.

8 On September 3, 2009, at the hearing on Plaintiffs' motion for preliminary
9 injunction, the Court denied Mr. West's motion because no motion to intervene by Mr.
10 West was on the docket. Dkt. 62. At the hearing, the Court informed Mr. West that it
11 would consider his motion once it was filed electronically on the docket, which has since
12 occurred. Dkt. 58.

13 At the hearing on September 3, 2009, the Court entered the following relevant
14 rulings: (1) Pursuant to Fed. R. Civ. P. 24(b) (permissive intervention), the Court granted
15 the motions to intervene filed by Washington Families Standing Together ("WFST") and
16 Washington Coalition for Open Government ("WCOG"), and (2) the Court denied
17 Plaintiffs' motion to consolidate the preliminary injunction hearing with a trial on the
18 merits. Dkt. 62.¹

19 On September 11, 2009, the Court entered an order granting the preliminary
20 injunction. Dkt 63. This order was appealed to the Ninth Circuit Court of Appeals. Dkt.
21 65.

22 For a more thorough discussion on the facts and procedural history of this matter,
23 see Dkt. 63 (Order granting preliminary injunction).

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27 ¹Mr. West opposes Plaintiffs' motion to consolidate. Dkt. 61. Because the Court denied
28 Plaintiffs' motion to consolidate, this basis for intervention is moot and will not be considered further in
this order.

II. DISCUSSION

A. Jurisdiction During Interlocutory Appeal

Because an appeal has been filed in this matter, the first issue to address here is whether the Court is divested of jurisdiction. Where notice of appeal is filed from a final judgment, the district court is divested of jurisdiction. *Laurino v. Syringa General Hosp.*, 279 F.3d 750, 755 (9th Cir. 2002); *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58-59 (1982). This general rule does not apply here because the Court has not entered a final judgment in this matter. Where an appeal is taken from an interlocutory order under 28 U.S.C. § 1292(a)(1), the trial court is not divested of jurisdiction to continue with other phases of the case. *Williams v. Alioto*, 625 F.2d 845, 848 (9th Cir. 1980) (citing *Depinto v. Provident Sec. Life Ins. Co.*, 374 F.2d 50, 52 n.2 (9th Cir. 1967)).

Here, because the appeal is from a preliminary injunction, the appeal is interlocutory. As such, the Court finds no reason to conclude it is divested of jurisdiction.

B. Arthur West's Intervention

1. As a Matter of Right

Arthur West moves the Court to allow him to intervene in this matter. Dkt. 58. "Under Fed. R. Civ. P. 24(a)(2), a party is entitled to intervene where (1) the intervention is timely; (2) the applicant has a significant protectable interest relating to the property or transaction that is the subject of the action; (3) the disposition of the action may, as a practical matter impair or impede the applicant's ability to protect its interest; and (4) the existing parties may not adequately represent the applicant's interest." *Gonzalez v. Arizona*, 485 F.3d 1041, 1051 (9th Cir. 2007) (internal citations omitted). Rule 24(a) is liberally construed in favor of intervenors. *California ex rel Lockyer v. U.S.*, 450 F.3d 436, 440 (9th Cir. 2006).

As a preliminary matter, Mr. West has the burden of showing that his interests are not adequately represented by existing parties. If unable to do so, Mr. West may not intervene as a matter of right. In assessing whether a present party will adequately

1 represent a potential intervenor's interests, the court should "consider several factors,
2 including whether [a present party] will undoubtedly make all of the intervenor's
3 arguments, whether [a present party] is capable of and willing to make such arguments,
4 and whether the intervenor offers a necessary element to the proceedings that would be
5 neglected." *Prete*, 438 F.3d 949, 956 (9th Cir. 2006).

6 Plaintiffs point out, however, that

7 there is [] an assumption of adequacy when the government is acting on
8 behalf of a constituency that it represents In the absence of a "very
9 compelling showing to the contrary," it will be presumed that a state
adequately represents its citizens when the applicant shares the same interest
10 Where parties share the same ultimate objective, differences in litigation
strategy do not normally justify intervention.

11 See Dkt. 48 (citing *Arakaki v. Cayetano*, 324 F.3d 1078, 1086 (9th Cir. 2003) (quoting 7C
12 Charles Alan Wright, et al., *Federal Practice and Procedure: Civil 2d* § 1909, 332 (2d ed.
13 1996))).

14 Here, Mr. West claims an interest in this action as a registered voter in order to
15 "cast an informed vote." Dkt. 58 at 2. Mr. West seeks the disclosure of the petitions for
16 R-71, which contain the personally identifying information of the petition signers. *Id.*
17 Mr. West also contends that, "[a]s a voter and a citizen, he has rights and interests that
18 differ from the [Defendants]." *Id.*² Although Mr. West's motion claims an interest
19 differing from the State, his motion to intervene does not articulate a compelling showing
20 how the State does not adequately represent his interests, which is presumed under
21 *Arakaki*. See 324 F.3d 1086; see generally Dkts. 58, 60, and 61; see also Dkt. 48. Mr.
22 West also fails to articulate why his interests are not adequately represented by WFST or
23 WCOG, intervenors in the matter. *Id.* Having not done so, Mr. West fails to meet his
24 burden to establish a right to intervene in this matter.

27 ²Mr. West articulates no other relevant basis on which his intervention should be permitted.
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(1). . . On timely motion, the court *may* permit anyone to intervene who: (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact.

(3) . . . In exercising its *discretion*, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the origianl parties' rights.

Here, as discussed above, Mr. West’s motion fails to show how his interests are not adequately served by those already parties to the action. Moreover, granting permissive intervention to Mr. West may open the floodgates to all voters who claim a unique interest in this matter, which would lead to protracted litigation and cause undue delay to the litigation.

Therefore, because Mr. West fails to meet his burden, his motion to intervene is denied. This denial does not preclude Mr. West from seeking any remedies available to him in state court.

Defendants filed an appeal in the Ninth Circuit challenging the Court’s grant of Plaintiffs’ motion for preliminary injunction (Dkt. 3). Dkt. 65. The merits of the matter before the Court are coextensive with those now before the Court of Appeals. Therefore,

1 the parties are ordered to show cause why the Court should not stay any further
2 proceedings in this matter pending the outcome of the appeal.

3 **D. Bond**


4 Although not explicitly discussed in the order granting Plaintiffs' motion for
5 preliminary injunction, no bond will be required in this matter because the non-moving
6 parties, the State, WFST, and WCOG, did not assert any costs or damages that would be
7 incurred, arising from a wrongful injunction. *See* Fed. R. Civ. P. 65(C); *see also Gorbach*
8 *v. Reno*, 219 F.3d 1087, 1092 (9th Cir. 2000) (holding the trial court properly used its
9 discretion in not requiring a bond where the non-moving party did not establish any costs
10 or damages that would be suffered, arising from a wrongful injunction).

11 **III. ORDER**

12 Therefore, it is hereby **ORDERED** that:

- 13 1. Mr. West's motion to intervene (Dkt. 58) is denied.
- 14 2. The parties may file additional briefing, not later than September 28, 2009,
15 to address the question of whether the Court may or should stay any further proceedings
16 in this matter pending the outcome of the appeal before the Ninth Circuit.

17 DATED this 16th day of September, 2009.

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21 BENJAMIN H. SETTLE
22 United States District Judge
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